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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-6373

ABRAHAM FIELDS,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM F. HYLAND
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR RESPONDENT
STATE OF NEW JERSEY
STATE HOUSE ANNEX
TRENTON, NEW JERSEY 08625

RICHARD W. BERG
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
APPELLATE SECTION
7 GLENWOOD AVENUE
EAST ORANGE, NEW JERSEY 07017
OF COUNSEL AND ON THE BRIEF

LEGAL MIMEOGRAPHING SERVICE, INC.
561 Broad St., Newark, N. J. (201) 643-4292

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-6373

ABRAHAM FIELDS,

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ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Superior Court of New Jersey, Appellate Division is attached hereto as Appendix A. The opinion of the Supreme Court of New Jersey denying certification appears in 64 *N.J.* 308, (1973). (Pal).

COUNTER-STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 40-3, respondent, State of New Jersey, respectfully submits the following additions and corrections to Petitioner's Statement of the Case:

Petitioner Abraham Fields and co-defendant Thomas Hines were indicted by the Hudson County Grand Jury on July 14, 1971 in Indictment No. 1093-70 charging them with separate counts of felony murder, premeditated murder and armed robbery. On December 9, 1971 co-defendant Hines retracted his former plea of not guilty and entered a plea of *non vult*. (See T2.2-10 et seq). Jury trial of petitioner Abraham Fields commenced on December 8, 1971. The State's proofs indicated that on October 24, 1970 at approximately 9:30 P.M. two black men wearing grey masks and armed with guns entered the L & M Delicatessen in Jersey City, New Jersey and announced an armed robbery. (T3.35-9 et seq). Anna Levine, the cashier, was behind the counter near the register waiting on a customer (T3.50-6); William Wheeler, an employee, was at his post next to the counter (T3.59-10); Harry Milstein, the owner, was behind the counter in the rear (T3.35-13); and Faival Zaczepinski, another employee, was shelving cans in the back of the store. (T3.37-8).

The taller culprit remained at the entrance of the store with his gun drawn while the shorter of the two walked around to Anna Levine, placed a gun against her chest, and told her: "Don't fight. Don't give no argument. I won't hurt you." (T3.50-8). He then shoved Mrs. Levine out of his way. (T3.50-12). She stumbled and was led to the rear of the store by a woman customer. (T3.51-10).

At that moment Zaczepinski ran from the back of the store toward the man at the front. (T3.51-20). As he reached the man, first a click sounded and then two shots rang out and Zaczepinski slumped toward the floor. After the shooting the smaller man grabbed the money from the exterior tray of the register and leaped over the counter. (T3.66-19). As he passed by the wounded Zaczepinski, he shoved him to the floor. (T3.67-5). Both men fled from the store.

The police arrived shortly thereafter with an ambulance and Zaczepinski was rushed to the Jersey City Medical Center. At approximately 10:00 P.M. he was brought into the emergency room where he was treated by Dr. Fred Sachs. He had two gunshot wounds of the upper abdomen and was in shock. (T5.4-16). In order to stabilize his condition to permit surgery, it was necessary to administer blood transfusions. Initially, four units were administered, but during the next two days, because of the quantity of blood he had lost, sixteen additional transfusions were necessary. That night an operation was performed which

abated the hemorrhaging. The victim stopped breathing twice on the operating table and his precarious condition limited exploratory surgery. The bullets were never removed. (T5.8-3 et seq).

Despite the injuries and complications, Zaczepinski survived and by November 15, 1970 had recovered sufficiently to be released from the hospital. Dr. Sachs remained the victim's physician during the next few months.

In early January, Zaczepinski came to the doctor's office with complaints of trembling. The doctor noted a coarse tremor to the hand and sent him to Dr. Valergakis for a neurological examination. Three or four days later, when Dr. Valergakis examined him, jaundice was obvious and the decedent was rehospitalized. Examinations by Dr. Sachs and Dr. Cangemi revealed the presence of a fulminant type of hepatitis. A few days later Faival Zaczepinski was dead. (T5.11-6).

The trial of this case consumed approximately twelve trial days. Harry Milstein, Anna Levine and William Wheeler testified for the State, describing the incident of October 24, 1970. Coats worn by the robbers were identified as well as the weapons used. However, on account of the masks they were unable to make a positive identification of the participants. (T3.36-1; T3.49-10; T3.58-24).

James "Sugar" Henry testified that he was with Thomas Hines and Abraham Fields during the afternoon and evening of October 24, 1970, at Hines' father's home. (T4.78-9). At that time Thomas Hines had borrowed his coat and Fields had borrowed a coat belonging to Melvin Hines, Thomas' brother. Both of the men were wearing these coats at about 8:45 P.M. when Sugar saw them, but Thomas Hines returned without his at about 1:00 A.M. Henry identified both coats, which had been previously identified as the coats worn by the robbers, as those borrowed by Hines and Fields.

Prior to this trial Thomas Hines had entered a plea of *non vult* to murder pursuant to an agreement that the State on sentencing day would recommend a maximum sentence of twenty years and would move to dismiss the two remaining counts of the indictment as well as another indictment and two complaints. Hines further agreed to testify for the State.

Hines testified that he and Abraham Fields were together on